

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Discussion of Objectives For Discussions with the Ronald Wastewater District Regarding Development of a Replacement Franchise Agreement
DEPARTMENT: City Manager's Office
PRESENTED BY: Kristoff T. Bauer, Assistant to the City Manager

PROBLEM/ISSUE STATEMENT: In 1997, the City developed an interlocal agreement with the Ronald Wastewater District (formerly known as the Shoreline Wastewater Management District) regarding the consolidation of wastewater service within the City under one provider. In October of 2001, the District completed a significant portion¹ of its major task under that agreement, i.e. it acquired the sanitary sewer operation in the Seattle Public Utilities' ("SPU") service area making the District the sole wastewater service provider operating in the City of Shoreline. The final step articulated in the interlocal agreement is the development of a new agreement charting the relationship between the District and the City.

The City has extended current franchise agreements with the District through June 30, 2002. It is the intent of both parties that replacement agreements be in place prior to that date. The goal of this discussion is to gain insight regarding Council's desired objectives for these discussions.

FINANCIAL IMPACT: The City's 2002 budget projects revenue in the amount of \$202,000 from a franchise fee on wastewater services in the Seattle Public Utilities service area. Extending this fee to the entire City through new agreements would increase revenues by as much as \$102,000 depending on timing and other key terms of the developed agreement. Failing to reach agreement with the District could result in the cessation of the current revenue stream as of June 30, 2002, reducing projected revenue by approximately 50%. The inclusion of a 6% fee provision to all District operations would generate an estimated **annual** revenue of \$404,000 in **2003**.

RECOMMENDATION

No action is required. This item is for discussion purposes only.

Approved By:

City Manager

City Attorney

¹ The District has not yet acted to annex this area to their District.

INTRODUCTION

In 1997, the Ronald Wastewater District ("District") and the City charted a path toward uniform and consistent wastewater service throughout the City of Shoreline through an interlocal agreement. The District has achieved the most significant tasks identified in that agreement and they are now the only provider of wastewater services within the City. The City and the District need to once again chart the course of their relationship into the future.

BACKGROUND

In 1997, the District and the City agreed that it was both in the best interest of the District's ratepayers and the City's citizens that the District assume responsibility for sanitary sewer services throughout the City of Shoreline. The parties developed and executed an interlocal agreement (Attachment A) setting out the responsibilities of both Including:

- City
 - Extend the District's King County franchises as necessary
 - Support the District's efforts to acquire the SPU service area
- District
 - Perform all tasks and legal processes necessary to acquire the authority and responsibility to operate and control all sanitary sewer systems in the City
 - Provide the City with regular updates
- Both
 - Cooperate in planning efforts
 - Upon the successful completion of the District's responsibilities the parties agreed to :
 - Negotiate a franchise agreement with a term of 15 years or as the parties agree
 - Negotiate an interlocal agreement related to the provision of sanitary sewer services addressing the following issues:
 - *A program for phasing in uniform service rates*
 - *The City's forbearance from exercising its authority to assume the District*
 - *Surcharges (additional rates charged to some subclass of customers usually to support unique system capital investments)*
 - *Any payments between the District and the City*

The District has completed its acquisition of the SPU service area effective October 2001. This acquisition included some area within the City of Lake Forest Park. The agreement between Lake Forest Park and the District regarding this portion of the acquisition gives Lake Forest Park the opportunity to acquire the area within their City back from the District within one year. Lake Forest Park has provided preliminary notice of its intent to take advantage of this opportunity, but Lake Forest Park's contribution to the acquisition cost will not be determined until October 2002. Lake Forest Park will have an opportunity to reconsider based upon that information leaving the boundaries of the District uncertain at least through late fall 2002.

The SPU area has not yet been annexed to the District. This means that these customers are not formally part of the District and do not currently have the right to vote for District Commissioners. The District understands its commitment under the interlocal agreement to initiate and support the annexation of the SPU area to the District. They have decided, however, to delay the annexation process pending the outcome of Lake Forest Park's decision and relative certainty regarding their boundaries, so they only have to do it once.

The interlocal agreement anticipated that the parties would develop both a franchise agreement and an interlocal to address issues between the parties just prior to the consummation of District's acquisition of the SPU area. The District found discussion with Seattle, however, both more uncertain and time consuming than expected and did not initiate discussions to develop these agreements. When approached by staff in August, the District requested additional time to focus the acquisition before beginning discussions with the City. The City took action in December to extend current agreements, i.e. the District's old King County franchise and the SPU franchise which include provision for a 6% franchise fee, through June 30, 2002.

DISCUSSION

The intent of this discussion is to review potential objectives for negotiations with the District. First, an initial issue that will need to be addressed is the desired form of the new agreement.

Form: The interlocal agreement refers to the development of two separate agreements, i.e. a franchise agreement and an interlocal agreement. A franchise agreement traditionally focuses on operational issues relating to the use of the City's right-of-way. The City has attempted to standardize its franchises and most of the issues addressed thereby are consistent and persistent. An interlocal agreement, in contrast, is a broad term that in this case was intended to address specific policy issues and delineate how each agency would cooperatively exercise its governmental power to provide this urban service. The interlocal addressed issues that were transitional, i.e. would exist for a limited time and are not likely to repeat.

The District has expressed a preference for focusing first on developing a 15 year franchise focused just on operational issues without any reference to a franchise fee or other policy issues. Discussions regarding policy issues would follow and be expressed through an interlocal agreement. This is consistent with the language of the existing interlocal agreement.

Based upon subsequent experience, staff believes that this bifurcation is artificial and may not place the City in the best legal position to support agreements reached between the parties. Contracts are essentially agreements through which parties agree to exchange something, i.e. consideration. When contracts are reviewed for enforceability the balance of consideration is a key element of that review. Both parties must give and receive some benefit and at times the balance of the benefit conferred can be an issue.

A franchise agreement is a grant of authority to utilize the City's property, the right-of-way. That grant is a benefit of significant value that can support an exchange of significant commitments. A franchise can also address transitional issues. The solid waste continuation franchises and the terms in the Seattle City Light franchise relating to the City refraining from providing electrical distribution services are examples of this use of a franchise. It is also simply easier to focus on the development and implementation of one agreement.

Recommendation: - *The City should seek to include continuing conditions and exchanges of value in a single franchise agreement. Provisions regarding any payment in accordance with City policy regarding compensation to the City's General Fund by utilities operating in the City should, for example, be included in the franchise. Transitional issues could be placed in a separate interlocal, but a single franchise is preferred and all agreements, if two are developed, should be executed or adopted at the same time.*

Payment: The City has established a clear policy requiring utilities operating within the City to contribute 6% of revenues derived therein to the City's General Fund. The mechanism for creating this obligation varies among utilities due to diverse regulatory requirements, but at this point the Ronald District is the only utility not making this contribution. Developing a mechanism to support this contribution should be a high priority and that mechanism should have the following characteristics:

- Simplicity
- Reasonably and easily adjustable to changing District revenue
- Equitably applied to rates
- Equitably applied to revenues

The District will argue for a fee that is calculated based on some measure separate from revenue, e.g. a \$ per linear foot of pipe in the right-of-way. They argue that this is more closely related to the City's grant to use the right-of-way provided by the franchise. This mechanism tends to result, however, in a flat payment amount that does not fluctuate with changing revenues. Staff does not share the District's concern over the legal appropriateness of a fee based upon percentage of revenue. Using percentage of revenues as a basis for franchise fees has long standing acceptance and is even specifically authorized under federal law in regards to cable TV. But room for compromise should exist as long as the mechanism does not become too complex or cumbersome to maintain.

SPU recovers their franchise fee through a flat fee on each customer regardless of the rate they pay. This can work significant inequities due to their variable service rate. Staff has spoken with customers for whom the franchise fee represents 50% of their bill. For others with higher service rates the franchise fee can represent well under 6%. Any payment to the City's General Fund should have a proportionate and equitable impact on customer service rates.

The District will argue that the King County charge for regional conveyance and treatment, which represents more than 73% of their monthly rate, should not be included in the definition of "revenue" for the purpose of calculating any payment to the

City. If this were the case then estimated annual revenues from wastewater services would drop from \$404,000 to \$109,000.

The District makes this argument based upon legal analysis that staff will discuss with Council in executive session. But staff believes that the District's situation is analogous to water services. A majority of the Shoreline Water District's revenues are collected to satisfy its cost of acquiring water from Seattle, i.e. this portion of the fee could be considered a pass through directly from the customer to the City of Seattle. Directly analogous is the SPU wastewater service rate a significant portion of which also goes to King County for treatment and conveyance. These revenues are not excluded for the purpose of determining the appropriate payment to the City in either case. All the District's revenues should be defined as "revenue" for the purpose of determining the appropriate contribution to the City's General Fund.

Recommendation: - *The City should be willing to be flexible regarding the mechanism for providing contribution to the City's General Fund consistent with adopted policies as long as that mechanism is:*

- *Simple to administer and understand*
- *Reasonably and easily adjustable with changing District revenue*
- *Equitably recovered through rates*
- *Applied to revenues consistent with City policy and arrangements made with other utilities*

Uniform Rates – Surcharges: The District currently charges a flat rate based upon Residential Customer Equivalent ("RCE"). This is a flow definition that has been adopted by King County and component agencies to ensure equal contribution to the regional conveyance and treatment system. This flat rate makes it very easy for the district to set rates. They simply pass through the King County rate per RCE and then divide their costs by the number for RCE's to calculate their portion of the rate.

The RCE definition, however, is based upon the physical characteristics of a connection, not actual usage. The District does utilize a variable rate for commercial customers based upon water usage that more closely reflects actual treatment and conveyance capacity usage.

In contrast, SPU charged (and the District continues to charge in that service area) a variable rate to all customers based upon water usage. This requires tracking water usage through data from the water utility; a simple task for SPU who also operated the water utility. The District is still utilizing SPU's rate policies in the area recently acquired from SPU.

When the interlocal was drafted in 1997, one of the main objectives mentioned by Councilmembers was the establishment of uniform wastewater service rates across the City. The Council did not express a preference for a variable or a fixed rate. Moving past SPU customers from a variable to a fixed rate will likely be both logistically and politically difficult. Since the RCE definition is meant to represent the average customer, moving to a fixed rate based upon RCE should result in a rate increase for about 50% of the customers (low water users, small households) and a decrease for the

other 50% (large water users, large households). Staff has already heard concerns from some SPU customers that the District's flat rate schedule is inequitable, because it doesn't track actual usage, and immoral, because it doesn't provide a conservation incentive.

The District has also used two different kinds of surcharges on top of standard rates. One charge has been added to rates in a portion of Richmond Beach annexed to the District to cover the capital cost of bringing that area up to District standards. Another is charged to unique service areas that have a particularly high associated maintenance and operation cost. The homes on the Puget Sound shore, for example, are served by a dedicated pumping system to convey their flows under the railroad and up to the gravity conveyance system that serves the rest of Richmond Beach. This system is uniquely expensive to operate and maintain and serves a relatively small set of customers, so that extra cost is recovered from those customers.

The District has mentioned that past SPU customers may be faced with a surcharge to cover capital costs necessary to improve the condition of the system that serves them. They are still performing analysis related to this issue and the magnitude or even necessity of such a charge is currently unknown.

Council is likely to be drawn into the variable versus fixed rate debate. The question is what role does Council want to have in that debate? Resolution of this debate is currently squarely in the District Commission's court, but the Council put it there through the 1997 interlocal and the City's support of the District's acquisition of the SPU service area.

Recommendation: - *Clarifying the timing and process for moving to a uniform service rate is an objective for the negotiation process clearly articulated by Council in the past. Staff has interpreted "uniform service rates" as indicating a policy disfavoring surcharges for general system improvements (analogous to Richmond Beach or SPU), but not necessarily for unique service costs (analogous to residents on Puget Sound). What role Council would like to play in the process of moving toward a uniform rate, if any, however, is unclear.*

Assumption: The District has stated its belief that it is in the best interests of their rate payers for the District to be maintained as an entity separate and independent from the City. Individual Councilmembers have expressed diverse opinions regarding the desirability and urgency of the City assuming control of utility operations within the City. Staff has provided significant analysis on this issue in relation to the Shoreline Water District that is for the most part analogous. All information that staff has discovered regarding the operations of the District indicate that it is an efficient and effective service provider with a talented and qualified staff.

It remains clear, however, that there are opportunities for improving efficiency by removing duplication between City and utility operations, for improving coordination between City and utility operations, and for defraying general administration costs that can best be achieved through assumption. There is also the risk that utility priorities will be lost in the balance of broader City objectives or sacrificed to serve those objectives.

The District's expressed desire is for a guarantee of independence from the City for 15 years or longer. A majority of Councilmembers have expressed discomfort with this time frame or even this kind of commitment, while a minority have expressed interest in rapid assumption of special purpose districts. The District faces a complex task in assimilating the SPU service area into their operations. Completing this task could take 4 to 6 years. The City is likely to be focused on significant capital projects and operational issues of its own for a similar time frame.

In order to meet Council's expectations with the developed agreement, staff needs direction regarding:

- Whether the Council is willing to include a restriction on its authority to assume the District in the agreement, and if so for how long?
- Whether a transition process toward assumption should be included in the agreement, and if so what are the bounds of a reasonable time frame for this process to take place?

If Council is willing to express a clear intent to assume the District at a future time certain, then it may be possible to develop a schedule of integration milestones that is achievable, beneficial to both, and perhaps comfortable.

Recommendation: - *The City should agree to maintaining the status quo for a reasonable period in order to allow parties to focus on higher priorities, but a time certain for either assumption or the initiation of a process toward assumption should be identified. Both parties need this certainty in order to appropriately plan for future operations.*

RECOMMENDATION

No action is required. This item is for discussion purposes only.

ATTACHMENTS

Attachment A – Interlocal Agreement Between the City of Shoreline and Shoreline Wastewater Management District Relating to Sanitary Sewer Services Within Shoreline City Limits

ATTACHMENT A

Clerk's Receiving

No. 426

Date 8/13/97

INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHORELINE AND SHORELINE WASTEWATER MANAGEMENT DISTRICT RELATING TO SANITARY SEWER SERVICES WITHIN SHORELINE CITY LIMITS.

THIS AGREEMENT is made and entered into this 13th day of August, 1997, by and between the City of Shoreline, a non-charter optional municipal code city (the "City") and Shoreline Wastewater Management District, a special purpose municipal corporation (the "District").

WHEREAS, the City is the local government with authority and jurisdiction with respect to the territory within its boundaries of incorporation; and

WHEREAS, the District provides sanitary sewer service to customers living within and without the incorporated boundaries of the City; and

WHEREAS, certain City residents living within the City's boundaries receive sanitary sewer service from the City of Seattle ("Seattle"); and

WHEREAS, the City desires to assure its residents of continued sanitary sewer service which will comply with federal, state and local law, will protect the public's health, safety, and welfare, and will provide uniform standards of service; and

WHEREAS, the District has the skills, assets, willingness and ability to expand its service area to cover the entire City; and

WHEREAS, the City recognizes that the District has a history of quality service within the City; and

WHEREAS, the City finds that it is in the best interest of its citizens to have a unified and uniform sanitary sewer system operated by the District;

NOW THEREFORE, in consideration of terms and provisions contained herein, the City and the District agree as follows:

Section 1. Purpose: It is the purpose of this agreement to guide the activities and efforts of the parties in moving to a wastewater service system in which the District provides sanitary sewer services to the entire City area as currently incorporated or as may hereinafter be adjusted through annexations.

Section 2. Responsibilities of the City: In satisfaction of the purpose of this agreement, the City shall have the following responsibilities:

- 2.1 Within thirty (30) days of the full execution of this agreement, the City shall officially notify all providers of sanitary sewer services operating in Shoreline,

- other than the District, of the City's intent to unify sanitary sewer services within the City with the District as the sole service provider.
- 2.2 The City shall assist the District in obtaining any necessary information or authorizations necessary to perform the District's obligations under this agreement.
 - 2.3 The City shall designate a representative to support the District in any efforts to negotiate a transfer of necessary assets from other sanitary sewer service providers to the District.
 - 2.4 The City will extend existing franchise agreements with the District for its current operations, as needed, for the duration of this agreement.
 - 2.5 The City shall support the District's efforts to comply with the terms of this agreement and shall refrain from taking any action that would impede or prevent the District's successful completion of this agreement.
 - 2.6 If the District satisfies its obligations under Section 3 of this agreement, and within five (5) years from the date this agreement is executed the City contracts with a party other than the District for the provision of sanitary sewer services in conflict with the purpose stated in Section 1, then the City shall reimburse the District for reasonable expenses incurred in the performance of the obligations set forth in Section 3.

Section 3. Responsibilities of the District: In satisfaction of the purpose of this agreement, the District shall have the following responsibilities:

- 3.1 The District shall perform all tasks, studies, investigations, and legal processes necessary for it to acquire the authority and responsibility to operate and control all sanitary sewer systems in the City including, but not limited to:
 - 3.1.1 Performing condition assessments of all systems in Shoreline not currently under its care and control,
 - 3.1.2 Performing analysis regarding the impact of system acquisition and other contemplated activities on existing sewer rates both in the existing and newly acquired service areas,
 - 3.1.3 Preparing a plan to integrate acquired systems with existing system and to upgrade acquired systems to conform to the District's operation and maintenance standards, for all systems to be added to the District's current service area,
 - 3.1.4 Negotiating with existing system owners for authority to operate and control those systems, and
 - 3.1.5 Preparing all documentation, materials, and/or other submissions necessary to annex all systems to the District.
- 3.2 The District shall provide all assessments, plans, budgets, and analysis available to the City upon completion of the task.

- 3.3 The District shall provide a representative and information to assist the City in providing progress reports to the City Council not less than every six (6) months following the full execution of this agreement.
- 3.4 Within thirty (30) days of the full execution of this agreement, the District shall appoint a representative to work with City Planning personnel in developing the sanitary sewer portion of the utility element of the City's Comprehensive plan.

Section 4. Mutual Responsibilities: In satisfaction of the intent of the Parties, the District and the City shall have the following mutual responsibilities:

- 4.1 Both Parties shall freely share all relevant information as needed.
- 4.2 The Parties shall cooperate and coordinate planning efforts including creation of the District's Comprehensive Plan update and the City's Utility Element of its Comprehensive Plan.
- 4.3 Upon the District's notification to the City that it has a reasonable expectation of the successful completion within nine (9) months of the notice, of its responsibilities under Paragraph 3.1 hereof, the Parties shall negotiate, in good faith, a unified City franchise agreement for the provision of sanitary sewer services to all of Shoreline with a term of 15 years or as otherwise agreed by the Parties. The Parties shall diligently pursue the adoption of said franchise agreement by both governing bodies no later than thirty (30) days following the District's successful completion of its responsibilities under Paragraph 3.1 hereof.
- 4.4 Upon the District's notification to the City, as outlined in Paragraph 4.3, the Parties shall negotiate, in good faith, an interlocal agreement related to the provision of sanitary sewer services to all of Shoreline. The Parties shall diligently pursue the adoption of said agreement by both governing bodies no later than thirty (30) days following the District's successful completion of its responsibilities under Paragraph 3.1 hereof. The interlocal agreement may include, but is not limited to, terms related to the following issues:
 - 4.4.1 A program phasing in uniform sanitary sewer rates,
 - 4.4.2 The City's forbearance from exercising its authority to assume the District under RCW Chapter 35.13A or other state law,
 - 4.4.3 Surcharges, and
 - 4.4.4 Any payments between the District and the City.

Section 5. Termination: This agreement shall terminate upon the earlier of the following:

- 5.1 The completion of the obligations of the parties under this agreement, including the adoption and acceptance of a unified City franchise and an interlocal agreement as contemplated by Paragraphs 4.3 & 4.4 hereof,
- 5.2 The substantial failure of either party to satisfy its responsibilities as described herein,
- 5.3 Thirty (30) days following the District's written notice to the City of its inability to successfully satisfy its responsibilities under Paragraph 3.1 hereof, or
- 5.4 The passage of three (3) years from the date this agreement is fully executed.
 - 5.4.1 Upon receiving written notice from the District of unreasonable delays caused by third parties beyond the District's control necessitating an extension in the term of this agreement, the City Manager or designee shall have the authority to extend this three (3) year period in six (6) month increments up to a total of five (5) years from the execution date.

Section 6. Additional Intent: The parties understand and agree that the following future actions and obligations are contemplated by the parties: (See Exhibit A)

- 6.1 The District shall execute an agreement with the City of Seattle, within forty five (45) days of the satisfaction of Paragraphs 4.3 & 4.4 hereof, providing for the transfer of ownership and authority to operate, the sanitary sewer system currently operated by Seattle Public Utilities, to the District.
- 6.2 The District shall initiate the annexation process within sixty (60) days of the satisfaction of Paragraphs 4.3 & 4.4 hereof, and pursue the successful completion of the annexation process under the shortest practical timeline.
- 6.3 The City shall support the District's efforts to annex service areas in Shoreline that are not currently serviced by the District, including, but not limited to, the City's participation in community meetings and in Boundary Review Board proceedings.
- 6.4 Upon the acquisition of the authority to operate and control any additional sanitary sewer systems in the City, including the annexation thereof, the District shall implement a repair and replacement program, as recommended by their condition assessment report, to bring the acquired system, within a reasonable time, up to the quality standards of the District as a whole. This shall include, if necessary, the incurring of any required bonded indebtedness.

Section 7. Hold Harmless: The Parties shall hold each other and their respective officers, agents and employees harmless from all costs, claims or liabilities of any nature, including attorneys' fees, costs and expenses for or on account of injuries or damages sustained by any

persons or property resulting from the negligent activities or omissions of that Party, or their respective agents or employees pursuant to this Agreement.

IN WITNESS THEREOF, the parties have executed this Agreement.

CITY:



By: Robert E. Deis

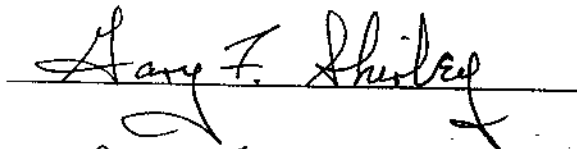
Its: City Manager

Attest:



City Clerk

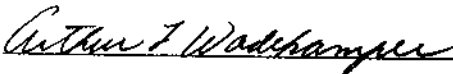
DISTRICT:



By: Gary F. Shirley

Its: President, Board of Commissioners

Attest:



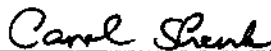
Secretary, Board of Commissioners

CERTIFICATION

I, THE UNDERSIGNED, CAROL SHENK, DEPUTY CITY CLERK OF THE CITY OF SHORELINE, WASHINGTON, CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF

Interlocal Agreement between the City of Shoreline and Shoreline Wastewater Management District dated 8/13/17.

SUBSCRIBED AND SEALED THIS 27th DAY OF December 20 01



CAROL SHENK
DEPUTY CITY CLERK

EXHIBIT "A"
SHORELINE WASTEWATER MANAGEMENT DISTRICT/
CITY OF SHORELINE:
TIME LINE

